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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

IAN LAMONTE CORMIER,

Defendant and Appellant.

E053579

(Super.Ct.No. RIF10004698)

OPINION

APPEAL from the Superior Court of Riverside County. James T. Warren, Judge.  
(Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art.  
VI, § 6 of the Cal. Const.) Affirmed.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton, and Emily R. Hanks, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Ian Lamonte Cormier was charged with assault with a deadly weapon likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(1).) After the court ordered some psychiatric evaluations, it found defendant was incompetent to stand trial, and suspended the proceedings. Defendant has appealed, however, contending that the trial court erred in refusing to hear his motion, under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*), to appoint a new attorney. We conclude that any error in failing to hold a hearing is harmless.

### FACTS AND PROCEDURAL HISTORY

On October 21, 2010, Oracio Zambrano was at the home of his friend, Leo Giron. They were busy changing a tire on Giron's car, which was parked in Giron's driveway inside his fenced yard. Giron's tire wrench did not fit the wheel bolts, however, so Zambrano went to his own car, which was parked on the street, to fetch a different tire wrench.

While Zambrano was getting the wrench from his car, he saw defendant walking on the opposite side of the street; defendant was yelling angrily and loudly at Giron, saying, "Come on," or "I'm gonna get you. Watch your back." Zambrano approached defendant to ask, "What happened?" or "What's the problem?" As Zambrano came close to him, defendant made a sudden move with his hand and struck Zambrano in the head or neck, causing Zambrano to fall. As Zambrano scrambled immediately to his feet, he saw that defendant held a screwdriver in his hand. Zambrano

retreated to the safety of Giron's yard. Defendant pointed at Giron and said, "I want you."

As a result of the attack, Zambrano suffered a puncture wound that required a staple to close.

Defendant was charged by information with one count of assault with a deadly weapon other than a firearm, by means of force likely to produce great bodily injury. The information also alleged two 1986 convictions of committing a lewd act with a child under age 14 (Pen. Code, § 288, subd. (a)), and alleged both prior convictions both as prison priors, and as strike priors.

On December 16, 2010, shortly after defendant was held to answer, his attorney declared a doubt as to defendant's competence to stand trial, pursuant to Penal Code section 1368. The court immediately suspended the proceedings and ordered two doctors appointed to evaluate defendant's competency. On the heels of the court's pronouncement, suspending proceedings and appointing the evaluators, defendant interrupted, telling the court that he wanted to make a *Marsden* motion. He asserted that his attorney was "inadequate. She's incompetent." He alleged that counsel had taken 52 days to visit him, he objected to her pursuit of "this insanity defense," and he complained that she had not followed up his suggestions for obtaining evidence (videotapes from commercial establishments, which he asserted would bear out his allegations that the victim had stalked and harassed him).

The court stopped defendant's statement: "Mr. Cormier, let me stop you. Criminal proceedings have been suspended." Defendant protested that he did not want the proceedings suspended, but the court went on to other business. As he was being taken from the courtroom, defendant yelled epithets at his attorney and repeated that he did not want her on his case; he wanted to pursue a defense of self-defense, and not insanity.

Pursuant to the court's orders, Dr. Assandri and Dr. Walsh examined defendant and provided reports to the court. Dr. Assandri concluded that defendant was not competent to stand trial. Dr. Walsh concluded that defendant was competent. The court then appointed a third expert to examine defendant, Dr. Suiter. Dr. Suiter's report concluded that defendant was not competent to stand trial. The court reviewed the reports and concluded that defendant was then mentally incompetent, and ordered that the proceedings remain suspended. The court appointed a psychiatrist to recommend an appropriate placement for defendant, and to determine whether defendant was competent to decide for himself whether to take any prescribed antipsychotic medication. On receipt of the psychiatrist's report, the court ordered defendant placed at Patton State Hospital until competency could be restored, and authorized involuntary administration of medication.

Defendant filed a notice of appeal, purporting to appeal from the court's "decision deeming defendant incompetent/insane, and sentencing defendant to three years at Patten [sic] State Hospital, while force feeding defendant psychotropic medication. Grounds for

appeal is ineffective assistance of counsel. Defendant request [*sic*] a thorough investigation by the Department of Justice. Plaintiff [*sic*] appeals Dept. 51 May 9, 2011, decision.”

Appellate counsel has construed the claim of ineffective assistance of counsel (IAC), as a claim that the trial court erred in failing to hold a hearing on defendant’s proposed *Marsden* motion. We turn to an examination of this claim.

### ANALYSIS

#### I. Any Error in Failing to Hold a *Marsden* Hearing Was Harmless

In *People v. Marsden, supra*, 2 Cal.3d 118, the California Supreme Court held that “the decision whether to permit a defendant to discharge his appointed counsel and substitute another attorney during the trial is within the discretion of the trial court.” (*Id.* at p. 123.) Further, ““The law governing a *Marsden* motion “is well-settled. ‘When a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney's inadequate performance. [Citation.] A defendant is entitled to relief if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result [citations].’ [Citations.]” [Citation.]’ (*People v. Memro* (1995) 11 Cal.4th 786, 857 [47 Cal.Rptr.2d 219, 905 P.2d 1305]; see

*People v. Panah* (2005) 35 Cal.4th 395, 431 [25 Cal.Rptr.3d 672, 107 P.3d 790].)”

(*People v. Jackson* (2009) 45 Cal.4th 662, 682.)

Here, defendant was able to articulate his reasons before the court. He complained that his appointed attorney had delayed 52 days before meeting with him. He stated that she refused to pursue evidence he wanted her to investigate; that is, he claimed that videotapes from two local businesses might provide footage showing that the victim, Zambrano, had engaged in a pattern of stalking defendant. Finally, defendant was angry because he believed that defense counsel was pursuing an insanity defense, whereas defendant wanted the case tried on the issue of self-defense. At that point, the court should have held a *Marsden* hearing.

“*Marsden* imposes four requirements . . . . First, if ‘defendant complains about the adequacy of appointed counsel,’ the trial court has the duty to ‘permit [him or her] to articulate his [or her] causes of dissatisfaction and, if any of them *suggest* ineffective assistance, to *conduct an inquiry* sufficient to ascertain whether counsel is in fact rendering effective assistance.’ [Citations.] . . . [¶] . . . [¶] Second, if a ‘defendant states facts sufficient to raise a question about counsel’s effectiveness . . . ,’ the trial court has a duty to ‘*question counsel as necessary* to ascertain their veracity.’ [Citation.] . . . [¶] Third, the trial court has the duty to ‘*make a record* sufficient to show the nature of [a defendant]’s grievances and the court’s response to them.’ [Citation.] . . . [¶] Fourth, the trial court must “‘allow the defendant to express any specific complaints about the

attorney and *the attorney to respond accordingly.*” [Citation.]” (*People v. Mendez* (2008) 161 Cal.App.4th 1362, 1367-1368.)

Defendant’s complaint here was sufficient to trigger the duty to conduct a hearing. The court erred in brushing aside the request, on the ground that proceedings had been suspended. That proceedings have been suspended to determine the defendant’s competency to stand trial does not preclude hearing a *Marsden* motion. (See *People v. Govea* (2009) 175 Cal.App.4th 57, 61 [trial court declined to hold a requested *Marsden* hearing on the ground that the defendant’s mental competence had to be determined first, but this was incorrect].)

The court’s failure to conduct a *Marsden* hearing, however, was not prejudicial under the circumstances. When the court has erroneously failed to comply with *Marsden*, we determine whether the record shows beyond a reasonable doubt that the error was harmless. (*People v. Marsden, supra*, 2 Cal.3d 118, 126; *People v. Eastman* (2007) 146 Cal.App.4th 688, 697.) Here, the record is sufficient to show the gist of defendant’s complaints about his attorney, matters which he repeated to the mental health examiners. He complained about the attorney’s conduct of the defense to the substantive charge, such as investigating the victim, and gathering evidence (the videotapes). He also wanted to pursue a defense of self-defense; his complaint that the attorney was pursuing an insanity defense was misdirected, as the competency proceedings were a wholly separate issue from the defense strategy to be pursued at trial. Even though the court erred in failing to conduct a *Marsden* hearing to address defendant’s concerns about

counsel's conduct of the defense, he is not precluded from renewing the motion, should the time ever come when he is restored to sanity and is able to be tried on the charge.

Defendant relies on *People v. Solorzano* (2005) 126 Cal.App.4th 1063, to argue that the court's order determining the question of competency must be reversed. *Solorzano* is inapposite, however. In that case, the alleged incompetence of the defendant's counsel was the failure to marshal evidence which would have supported the claim that the defendant was incompetent to stand trial. In the absence of that evidence, the defendant was found competent, and he was tried and convicted. Under those circumstances, the failure to hear the *Marsden* motion before ruling on the competency question was prejudicial; because of the passage of time, the defendant was precluded from being able to prove that he was incompetent at the time of trial. Thus, he may have been forced to stand trial even though he was incompetent, which would constitute a due process violation. There is no potential for such a due process violation in this case.

Because the court's failure to hear his *Marsden* motion did not prejudice defendant, no intervention or reversal is required.



DISPOSITION

Although the trial court erred in failing to conduct a *Marsden* hearing below, we find beyond a reasonable doubt that defendant was not prejudiced by the error. If and when defendant is restored to competence, he remains free to renew the motion at that time. The judgment is affirmed.

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MCKINSTER  
J.

We concur:

HOLLENHORST  
Acting P.J.  
MILLER  
J.